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No. 87-940

In The
Supreme Court of the United States
October Term, 1987

CLIFFORD RAY SINCLAIR,
Petitioner,

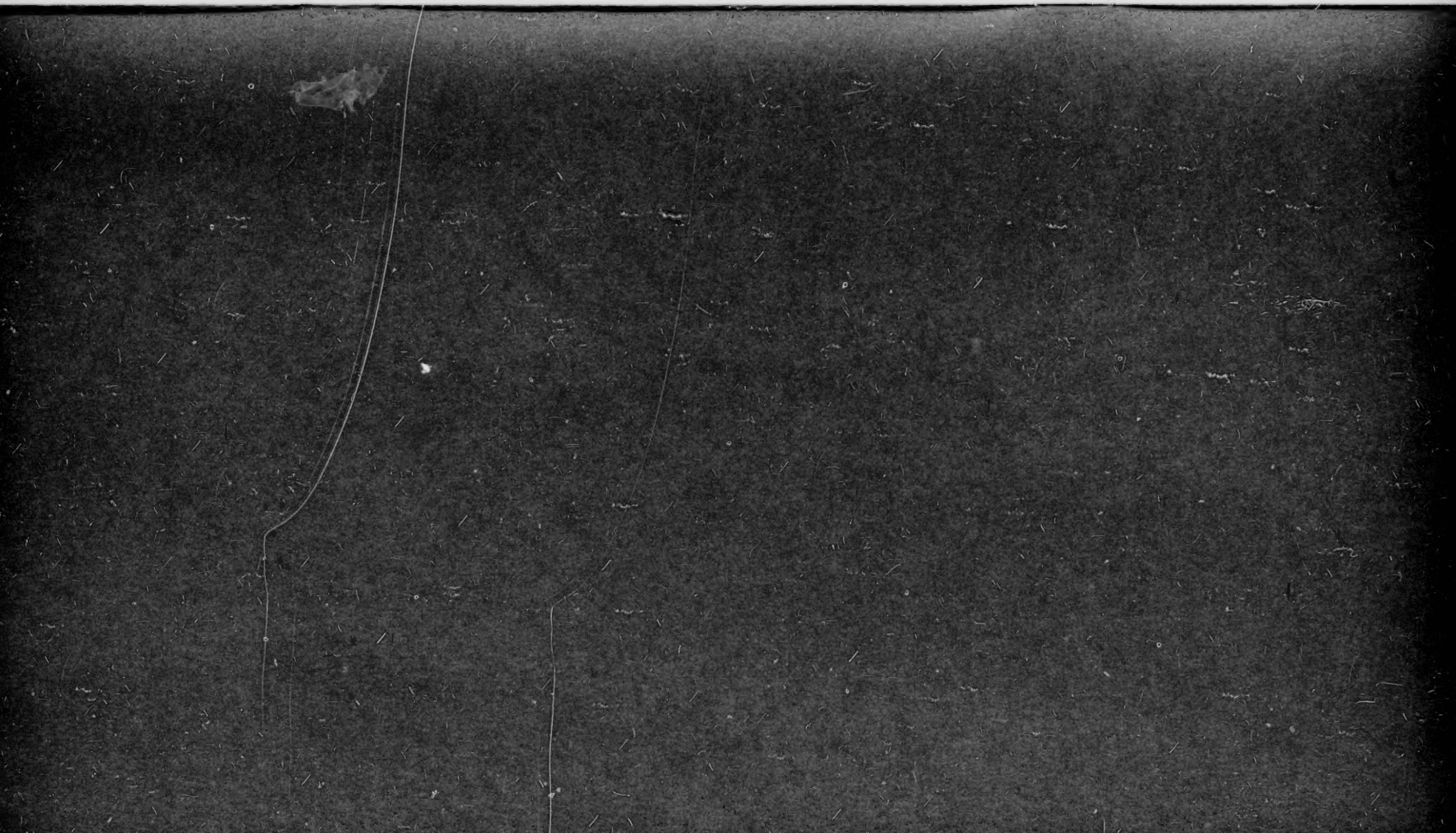
v.

MONTGOMERY COUNTY, ALABAMA; MONTGOMERY COUNTY COMMISSION; JIMMY HAROLD EVANS, District Attorney for Defendant Montgomery County, Alabama; ELEANOR I. BROOKS, Chief Deputy District Attorney for Montgomery County, Alabama; MAC SIM BUTLER, Sheriff of Montgomery County, Alabama; O. C. THOMPSON, Deputy Sheriff of Montgomery County, Alabama: STATE OF ALABAMA; BRYAN E. MORGAN, employee of The State of Alabama; ALABAMA SECURITIES COMMISSION; and LANDON THOMAS ADLRICH, employee of The Alabama Securities Commission,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTION PRESENTED

Whether a Texas Plaintiff seeking injunctive relief and monetary damages against multiple Alabama officials and governmental entities* for alleged wrongful requests for extradition may maintain venue in the district of one of his arrests by unnamed Texas authorities after the District Court properly orders a transfer of the case to Alabama pursuant to 28 U.S.C. § 1404(a), but later dismisses the action at the Plaintiff's request.

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*Montgomery County, Alabama; Montgomery County Commission (consisting of 8 Alabama residents); Jimmy Harold Evans; Eleanor I. Brooks; Mac Sim Butler; O. C. Thompson; State of Alabama; Bryan E. Morgan; Alabama Securities Commission (consisting of 16 Alabama residents); and Landon Thomas Aldrich.

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Respondents Montgomery County, Alabama, Montgomery County Commission, Jimmy Harold Evans, Eleanor I. Brooks, Mac Sim Butler, and O. C. Thompson respectfully request that this Honorable Court deny the Petition For Writ of Certiorari to the United States Court of Appeals For the Fifth Circuit submitted by Petitioner Clifford Ray Sinclair.

STATUTORY PROVISIONS INVOLVED

1. 28 U.S.C. § 1404(a), entitled "Change of Venue", provides:

> For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

2. 28 U.S.C. § 1391(b), entitled "Venue Generally", provides:

> A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, or in which the claim arose, except as otherwise provided by law.

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STATEMENT OF THE CASE

The following is offered as a supplement and correction to Petitioner's statement.

The Petitioner operated for ten months under the name of Diversified Financial & Management Services in the Northern District of Texas. He hired local "representatives" in thirteen states and two "representatives" in Alabama to sell his loan application services. The Petitioner's statement does not discuss the fact that he personally received at least half of the $100.00 to $350.00 fee collected from each of sixty Alabama residents without ever securing a loan. Also not mentioned is the fact that twenty-four "capias" arrest warrants were issued by the Circuit Court of Montgomery County on May 9, 1978 on

the basis of grand jury indictments. On May 30, 1978, Petitioner was arrested in the Eastern District of Texas by unnamed Texas officials under authority of such Alabama warrants. Such arrest by an unnamed Texas sheriff, occurring nearly eight years before this action was filed, is the only basis asserted by Petitioner for maintaining venue in the Eastern District of Texas.

Four separate requests for extradition to the Governor of Texas were consistently thwarted until the Governor of Texas finally issued a Governor's warrant for the Petitioner's arrest. Instead of returning to Alabama to defend the charges, the Petitioner sought and received a Writ of Habeas Corpus in a Texas State Court. Thereafter, the Governor of Alabama filed a fifth request for extradition, but once again, Petitioner sought and received a Writ of Habeas Corpus in the same Texas State Court.

On December 19, 1985, when it was discovered that Petitioner was being held in the Northern District of Texas on unrelated federal indictments, one of the Respondents requested that Petitioner be detained. Again, instead of returning to Alabama to defend the charges, Petitioner filed this action for declaratory and injunctive relief and monetary damages against thirty Alabama officials, Montgomery County and the State of Alabama. The Honorable Robert M. Parker, United States District Judge for the Eastern District of Texas, ordered that the action be transferred to the Middle District of Alabama pursuant to 28 U.S.C. § 1404(a) for the manifest convenience of parties and witnesses. Petitioner thereupon filed a Motion For Reconsideration, and in hi brief requested dismissal of the action as an alternative to transfer. The District

Court thereafter dismissed the action as requested. The District Court's Order was affirmed by a judgment of the United States Court of Appeals for the Fifth Circuit on September 11, 1987 on the exclusive grounds of improper venue.

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REASONS FOR DENYING THE PETITION

The sole question presented in the Petition is whether this Court should grant an exception to the venue law established in *Leroy v. Great Western United Corp.*, 443 U.S. 173 (1979). However, the circumstances of this case present no special or important reasons for such an exception. Further, transfer of this case pursuant to 28 U.S.C. § 1404(a) was not a clear abuse of discretion by the District Court, and a subsequent dismissal at the Petitioner's own request is not error, especially when there are several valid alternative grounds upon which affirmance by the Fifth Circuit Court of Appeals might have been predicated.

(1) As stated by the Fifth Circuit Court of Appeals in its opinion affirming dismissal of this action for improper venue, this Court has already definitively addressed the Congressional intent underlying the "where the claim arose" segment of 28 U.S.C. § 1391(b) (*See*, Petition, p.A-3); *See also, Pennzoil Co. v. Texaco, Inc.*, — U.S. —, 107 S.Ct. 1519, 1532-33 (1987) (Marshall, T. concurring). As in *Leroy, supra*, Petitioner here complains of the constitutionality of the actions of non-resident governmental officials which foreseeably resulted in detriment to Petitioner in his district of choice. 443 U.S. at 177.

Also, as in *Leroy*, all of the defendant officials reside in another district, all of their actions took place in that other district, and all of the witnesses to those actions reside in that other district. In short, the Court of Appeals properly applied the *Leroy* rule in this case, and this case possesses no distinguishing characteristics to warrant consideration by this Court.

(2) The decision of the Fifth Circuit Court of Appals follows a consistent and unbroken line of authority stemming from this Court's decision in *Leroy*. There is no conflict in the numerous decisions of other Federal Courts of Appeals on this well settled issue. *See Noxell Corp. v. Firehouse No. 1 Bar-B-Q Restaurant*, 760 F.2d 312 (D.C. Cir. 1985); *Reuber v. United States*, 750 F.2d 1039 (D.C. Cir. 1984); *Naartex Consulting Corp. v. Watt*, 722 F.2d 779 (D.C. Cir. 1983) *cert. denied*, 467 U.S. 1210 (1984); *Johnson Creative Arts, Inc. v. Wool Masters, Inc.*, 743 F.2d 947 (1st Cir. 1984); *Rosenfeld v. S.F.C. Corporation*, 702 F.2d 282 (1st Cir. 1983); *Myers v. American Dental Association*, 695 F.2d 716 (3rd Cir. 1982) *cert. denied*, 462 U.S. 1106 (1983); *O'Neill v. Battisti*, 472 F.2d 789 (6th Cir. 1972) *cert. denied*, 411 U.S. 964 (1973); *J. Walker & Sons v. DeMert & Dougherty*, 821 F.2d 399 (7th Cir. 1987); *City of Evansville, Indiana v. Kentucky Liquid Recycling, Inc.*, 604 F.2d 1008 (7th Cir. 1979); *Maybelline Co. v. Noxell Corp.*, 813 F.2d 901 (8th Cir. 1987); *Bredberg v. Long*, 778 F.2d 1285 (8th Cir. 1985); *Patch v. Playboy-Enterprises, Inc.*, 652 F.2d 754 (8th Cir. 1981); *Costlow v. Weeks*, 790 F.2d 1486 (9th Cir. 1986); *District No. 1, Pacific Coast District v. State of Alaska*, 682 F.2d 797 (9th Cir. 1982); *Hustler Magazine, Inc. v. United States District Court for the District of Wyoming*, 790 F.2d 69 (10th Cir. 1986).

(3) Contrary to Petitioner's assertions, the decision of the Fifth Circuit Court of Appeals does not create any form of "venue gap" with respect to Petitioner. Clearly, Petitioner's claim for redress for alleged harassment by Respondents could properly be brought in Alabama, the residence of all Defendants, and the federal courts in Alabama would be as competent as Texas federal courts in safeguarding Petitioner's rights and remedies. Petitioner's real complaint with regard to pursuing this civil action in Alabama is not that proper venue does not exist there, but is rather based upon no more than his desire to avoid that state so as to avoid potential criminal prosecution. It would hardly be unjust to require a lawfully indicted criminal defendant who had derived substantial income from Alabama residents to pursue an action in Alabama arising out of that business. Additionally, the possibility of standing trial on valid criminal indictments does not violate any right possessed by Petitioner since no citizen is immune from prosecution for his alleged criminal acts. *Watson v. Buck*, 313 U.S. 387, 400 (1941). Even should such a prosecution occur, it must be presumed that Petitioner will be given a full opportunity to present all appropriate factual and constitutional defenses. *Pennzoil Co. v. Texaco, Inc.*, — U.S. —, 107 S.Ct. 1519, 1529 (1987). For these reasons, the "venue gap" suggested by Petitioner is simply nonexistent.

(4) Even assuming, for the sake of argument, that the facts surrounding this action were somehow distinguishable from those in *Leroy*, a review of this case would necessarily require an assessment of whether this case was properly transferable under 28 U.S.C. § 1404(a). The convenience of the parties and witnesses and the interests

of justice are committed to the district court's broad discretion, *Norwood v. Kirkpatrick*, 349 U.S. 29, 31-32 (1955), and the facts presented in the Petition unquestionably show no abuse of that discretion. Further, the Petitioner specifically requested dismissal in his brief filed with the District Court and cannot now claim that such was error. *Milliken v. Myer*, 311 U.S. 457, 461 n.8 (1940).

(5) The dismissal of this action may also be predicated upon Respondents' numerous other defenses which have not yet been considered. See *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 525 (1974). Respondents have raised valid defenses of insufficiency of process, insufficiency of service of process, lack of personal jurisdiction, abstention, exhaustion, statutes of limitations, failure to state a claim upon which relief can be granted and absolute or qualified immunities, among others. Dismissal of this case was therefore not an action which justifies an exercise of this Court's discretion in granting the Petition For Writ of Certiorari.

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CONCLUSION

For the foregoing reasons, the Petition For Writ of Certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit should be denied.

Respectfully submitted,

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